

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN ROYAL JOHNSON**, on March 27, 2003 at 3:00 P.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Royal Johnson, Chairman (R)
Sen. Corey Stapleton, Vice Chairman (R)
Sen. Bea McCarthy (D)
Sen. Walter McNutt (R)
Sen. Gary L. Perry (R)
Sen. Don Ryan (D)
Sen. Emily Stonington (D)
Sen. Bob Story Jr. (R)
Sen. Mike Taylor (R)
Sen. Ken Toole (D)

Members Excused: None.

Members Absent: None.

Staff Present: Todd Everts, Legislative Services Division
Marion Mood, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: None
Executive Action: HB 641; HB 571; HB 337; HB 304

EXECUTIVE ACTION ON HB 641

CHAIRMAN ROYAL JOHNSON advised since there had been disagreement during the hearing, he had asked the parties involved to get together, solve their problems and create a bill beneficial to the people of Montana. **REP. DICK HAINES** had supervised this meeting and was asked to give a status report.

REP. DICK HAINES, HD 63, MISSOULA, recalled the recurring question why the parties could not come to an agreement when all the necessary pieces were available, and stated an agreement could not be forged because not all of the issues had been covered and discussed. He repeated the originating carrier did not always encode the identifying information on his call system which made it impossible for the terminating carrier to bill him. Sometimes this information was in the call stream but was either blended or stripped, and the terminating carrier again is unable to identify the call. The transiting carrier was able to discern this information but did not always forward enough information to the terminating carrier. He maintained billing records could be furnished but were not always accurate or they may not always have enough data for the terminating carrier to properly bill the originating carrier; and thirdly, the question arose as to who would pay for the billing records. These were the main points of contention, and he believed they were worked out during the previous Saturday's meeting. The sponsor handed out **Amendment 064101.ate, EXHIBIT(ens65a01)** and stated the amended bill required all telecommunications companies to provide the necessary information by way of interconnection agreements; if agreements were in place but were not adhered to, provisions in the bill can force them. Several members of the PSC had participated, and he was convinced they would be able make this process work, and also would be the settler of any disputes; the bill provided the commission with the authority to either let the terminating carrier stop accepting traffic on their network, arrange for interim payments while the dispute is being settled, or order other appropriate relief. He emphasized one of the concerns which surfaced during the hearing had been the idea of stopping traffic from coming into the network, and he contended this was standard industry practice. The bill did stipulate, though, that the terminating carrier cannot arbitrarily terminate traffic; he has to petition the PSC who will then determine whether to stop traffic or not.

REP. HAINES submitted supporting documents, **EXHIBIT(ens65a02)** and **EXHIBIT(ens65a03)**.

CHAIRMAN JOHNSON asked if the amendments would take care of all of the problems and whether everyone involved had seen them.

REP. HAINES replied everyone had seen the amendments as well as the grey bill and commented both Western Wireless and Ronan Telephone did not like this version, either. **CHAIRMAN JOHNSON** inquired if **Mr. Swanson** had seen the amendments which he confirmed, saying his company did not entirely agree with them.

SEN. MIKE TAYLOR, SD 37, PROCTOR, asked the sponsor how much money was involved. **REP. HAINES** stated he did not know exactly but thought it had to be substantial because 80% of the calls

could not be billed properly. **SEN. TAYLOR** wondered if someone in the audience was able to answer his question. **Bill Squires, Blackfoot Telephone Cooperative**, stated between his company and **3 Rivers Communications** alone, revenue lost in the last four years amounted to roughly \$5 million; he estimated his company would be able to recoup \$3 - 500,000 per year if HB 641 passed. **SEN. TAYLOR** asked if anyone else's company had lost revenue due to this problem. **Chuck Evilsizer, Ronan Telephone Company**, stated his company was suing for \$400,000, and he claimed they would lose their lawsuit if this bill passed. **SEN. TAYLOR** addressed **Geoff Feiss** and asked if HB 641 was to pass, would the money be re-invested in Montana. **Mr. Feiss** affirmed this, adding these local phone companies would definitely re-invest it.

SEN. COREY STAPLETON, SD 10, BILLINGS, ascertained \$5 million was owed to him, and **Mr. Squires** replied that amount was a combination between Blackfoot and 3 Rivers Communications. **SEN. STAPLETON** wondered how much money his company owed as an originating carrier, and **Mr. Squires** stated they owed none; their outgoing calls were identifiable, billed and paid.

SEN. DON RYAN, SD 22, GREAT FALLS, wondered what the cost of the billing records were; he seemed to recall it was 1/4 cent per record. **Mr. Squires** explained Qwest had this amount in some of its current agreements but he did not know whether the PSC would approve it under this bill. **SEN. RYAN** inquired if they had ever asked for these records, and **Mr. Squires** informed him they had not because heretofore, Qwest had required them to sign an agreement in order to obtain the records, and he felt this agreement was one-sided and onerous; he added HB 641 would get rid of such a requirement. **SEN. RYAN** asked **Mr. Hays, Qwest**, if he perceived a problem with the agreement. **Mr. Hays** replied it was part of their standard interconnection agreement which they had with various providers and suppliers across the region; he did not know what the perceived problem would be. **SEN. RYAN** inquired how many records he could make available for 1/4 cent per record. **Mr. Hays** stated he would release all of the records of calls terminating to their trunks, and the amount would vary depending on the number of calls. **SEN. RYAN** assumed it would be more than four or five records and asked for an estimate. **Mr. Hays** replied it would be thousands.

SEN. BEA MCCARTHY, SD 29, ANACONDA, wondered if this issue was discussed at Saturday's meeting, and **Mr. Hays** advised, to his knowledge, it was not. **REP. HAINES** stepped forward and contended this issue was brought up and discussed thoroughly; he advised the meeting was taped and recorded by a stenographer. The agreement contained a liability clause which Blackfoot did not

want to sign as they did not want to be held liable if the information proved to be inaccurate. **SEN. MCCARTHY** asked **Mr. Squires** to briefly explain this liability issue. **Mr. Squires** replied they, and other companies like them, did not want to sign the contract because it relieved Qwest of all liability for the data they provided.

CHAIRMAN JOHNSON invited **REP. HAINES** to add any relevant comments before the committee voted; **REP. HAINES** quoted from the notes as recorded by the stenographer: "**REP. HAINES** stated that if he was hearing the group correctly, they definitely needed the interconnection agreement, they still need the blocking ability, they still need to be able to appeal non-performance of either entering into an agreement or failing to carry out certain terms of the agreement and need to be able to appeal all of that to the Public Service Commission. There was agreement on that."

CHAIRMAN JOHNSON thanked the sponsor for all he had done, and announced the committee would take a **Roll Call Vote**.

Motion: **SEN. TOOLE** moved that HB 641 BE CONCURRED IN.

Substitute Motion: **SEN. TOOLE** moved that AMENDMENT HB064101.ATE BE ADOPTED.

Vote: Substitute motion carried unanimously.

Motion/Vote: **SEN. TOOLE** moved that HB 641 BE CONCURRED IN AS AMENDED. Motion carried 6-4 with MCNUTT, PERRY, STAPLETON, and TAYLOR voting no.

EXECUTIVE ACTION ON HB 571

Motion/Vote: **SEN. TAYLOR** moved that HB 571 BE INDEFINITELY POSTPONED. Motion carried 6-4 with MCCARTHY, RYAN, STONINGTON, and TOOLE voting no (Roll Call).

EXECUTIVE ACTION ON HB 337

Motion: **SEN. TOOLE** moved that HB 337 BE CONCURRED IN.

SEN. TOOLE introduced Amendment HB033701.ate, **EXHIBIT**(ens65a04).

Motion: **SEN. TOOLE** moved that AMENDMENT HB033701.ATE BE ADOPTED.

Discussion:

Mr. Everts explained HB 337 dealt with the allocation of costs associated with moving structures, and the amendments set up a process for the PSC to set a cost schedule within 30 days, and it amended the bill to where 100% of the costs are paid by a mover for any structure not owned by a person for occupancy or use; if it is owned for occupancy or use, the utility and the mover each pay 50%.

SEN. McCARTHY referred to item (5) of the amendment and wondered if this said a structure could be moved and stored within one trip. **Mr. Everts** advised this amendment merely included prefabricated structures within the requirement that the mover pay 100% of the cost. **SEN. McCARTHY** was not satisfied with his answer and asked again if a structure could be stored a number of times on the way to its destination. **Mr. Everts** explained, as it was moved from the point of fabrication through the service territory to a storage location and then moved again, it would constitute two moves.

Vote: Motion that AMENDMENT HB033701.ATE BE ADOPTED carried unanimously.

Motion/Vote: SEN. TOOLE moved that HB 337 BE CONCURRED IN AS AMENDED. Motion carried 9-1 with STAPLETON voting no (Roll Call vote).

{Tape: 1; Side: B}

EXECUTIVE ACTION ON HB 304

SEN. STORY stated he would hold off on introducing amendments he had prepared to hear the ones **SEN. STONINGTON** had requested first, adding should they be adopted, he would refrain from bringing his proposed amendments.

Motion: SEN. TOOLE moved that HB 304 BE CONCURRED IN.

Substitute Motion: SEN. TOOLE made a substitute motion that AMENDMENT HB030402.ATE, **EXHIBIT**(ens65a05), BE ADOPTED.

Discussion:

Mr. Everts advised HB 304 modified the coal severance tax rate for certain types of facilities in which coal was contracted to an electrical generation facility in Montana; the tax break was 1/3 of the rate outlined in the bill. The amendments requested by **SEN. STONINGTON** stipulate in order to get the severance tax break, the electrical producer has to sell the electricity to Montana customers and distribution services providers as opposed

to "offer for sale". The tax break can only apply to the amount of coal used for the production of electricity sold in Montana; the bill did not specify this clearly. Lastly, the amendment allowed this tax break to remain in effect for only two years.

SEN. TAYLOR stated energy production facilities had received a tax break during the last Session, and he had forgotten what the specified exemptions were. **Mr. Everts** recalled this provision was contained in SB 506, and it was a property tax exemption for 10 years, coupled with a local impact fee; he could not remember the classification, though. **SEN. TAYLOR** asked if SB 506 also required a portion of the electricity be sold within the state. **SEN. STORY** recalled it had to do with the 1999 re-classification of generators from a class 9 at 12% to class 13 at 6%; this applied to all generators regardless of where the power was sold. **SEN. TAYLOR** was certain another bill was passed, giving some sort of tax reduction, and **SEN. STORY** recalled it was SB 508 which allowed generators a tax reduction in their first ten years but required them to pay impact fees in lieu of the taxes. **SEN. TAYLOR** wanted clarification whether a portion of the energy had to be sold within Montana, and **Mr. Everts** remembered there were qualifications on selling a certain portion of that power in order to be eligible for the tax break. **SEN. STORY** advised the qualifications were the same as in HB 304.

SEN. RYAN liked the amendment because the bill created a loophole by merely requiring to "offer for sale at a price", whereas the amendment required it to be sold in Montana which reduced the rate, and in turn benefitted the ratepayer.

SEN. STORY opposed the amendment, stating the reason for the incentives last session was the way energy markets functioned in the present system; he explained if a new utility built a generating facility and based their price in good faith on the cost of the facility plus a reasonable rate of return, and the incumbent generator was able to underbid him, he would not be able to stay in business. The philosophy of the incentives was protection of new generation; the electricity had to be "offered for sale". **CHAIRMAN JOHNSON** asked him how his proposed amendments differed from the ones being discussed. **SEN. STORY** advised his amendments took out the "first half" language, and changed the wording "cost set by the PSC" to "price approved by the PSC"; the balance was an attempt to put things in laymen's terms.

Vote: Substitute motion that AMENDMENT HB030402.ATE BE ADOPTED carried 6-4 with MCNUTT, STAPLETON, STORY, and TOOLE voting no.

Motion/Vote: SEN. TOOLE moved that HB 304 BE CONCURRED IN AS AMENDED. Motion carried 8-2 with STORY and TOOLE voting no.

SEN. STORY advised he did not want to offer his proposed amendments because the only technical change was "cost approved" as opposed to "cost set", and if the first amendment passed, the second would not, and he did not want to waste the committee's time.

ADJOURNMENT

Adjournment: 3:40 P.M.

SEN. ROYAL JOHNSON, Chairman

MARION MOOD, Secretary

RJ/MM

EXHIBIT (ens65aad)